

Testimony of the Contractors License Board

Before the
House Committee on Consumer Protection & Commerce
Friday, March 19, 2021
2:00 p.m.
Via Videoconference

H.C.R. 141, REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO CONDUCT A REVIEW REGARDING THE PERFORMANCE OF “INCIDENTAL AND SUPPLEMENTAL” CONTRACTING WORK

Chair Johanson and Members of the Committee:

My name is Candace Ito, and I am the Executive Officer of the Contractors License Board (Board). The Board offers comments on this resolution.

The purposes of this resolution are to request that the Legislative Reference Bureau (LRB) conduct a study of: (1) best practices regarding "incidental and supplemental" contracting work; (2) examine how other state jurisdictions define and handle “incidental and supplemental” contracting work; and (3) include factors, other than cost, that other state contractor licensing boards or similar entities apply when determining “incidental and supplemental” with respect to contracting work.

The Board will be reviewing this resolution at its meeting on March 19, 2021. In the meantime, the Board offers comments based on its prior position on similar resolutions.

Pursuant to the Hawaii Supreme Court decision in the District Council 50 v. Lopez, 129 Haw. 281, 287, 298 P.3d 1045, 1051 (2013), the Board has determined that to qualify as “incidental and supplemental” work, the work must be subordinate to, directly related to, and necessary for the completion of the work of greater importance that is within the scope of the licensee’s license (i.e., the primary work the specialty contractor is licensed to perform)¹.

The Board’s determination takes into account the cost and extent of the other specialty contracting work and whether the work constitutes less than a majority of the

¹ See, the October 18, 2013, Board’s Final Order Upon Remand (Final Order) in In the Matter of the Petition for Declaratory Relief of District Council 50 of the International Union of Painters and Allied Trades and Aloha Glass Sales & Service, Inc., CLB-DR-2006-2.

project; the Board also requires that the other specialty contracting work be subordinate and constitute less than a majority of the project.

Since October 2013, the Board has consistently applied this standard to numerous scope of work inquiries. The Board carefully considers each inquiry pertaining to incidental and supplemental work and studies each project's plans and specifications. The Board considers many factors, including: life safety; cost; extent of work; number of man hours; amount of materials involved; proximity of other specialty contracting work to the primary work; and whether the work is less than a majority of the project. The Board's current implementation of its Final Order is comprehensive, fair, and protects the public's health and safety.

In addition, page 1, line 27 to page 2, line 3 and page 3, lines 14 through 18 indicate that these resolutions pertain to "incidental and supplemental" work of certain specialty classifications. If a study is to be conducted, it should include all the contractor specialty classifications and afford representatives from the various specialty contractor classifications an opportunity to provide input. In addition, if the LRB will be required to solicit input from entities that are not contractors, such as construction unions, it should likewise solicit input from contractor associations.

Thank you for the opportunity to testify on this resolution.

Charlotte A. Carter-Yamauchi
Director

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LEGISLATIVE REFERENCE BUREAU
State of Hawaii
State Capitol, Room 446
415 S. Beretania Street
Honolulu, Hawaii 96813

Written Comments

HCR141

REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO CONDUCT A REVIEW REGARDING THE PERFORMANCE OF "INCIDENTAL AND SUPPLEMENTAL" CONTRACTING WORK

Charlotte A. Carter-Yamauchi, Director
Legislative Reference Bureau

Presented to the House Committee on Consumer Protection & Commerce

Friday, March 19, 2021, 2:00 p.m.
Conference Room 329

Chair Johanson and Members of the Committee:

Good afternoon Chair Johanson and members of the Committees. My name is Charlotte Carter-Yamauchi, and I am the Director of the Legislative Reference Bureau. Thank you for providing the opportunity to submit written comments on H.C.R. No. 141, Requesting The Legislative Reference Bureau to Conduct a Review Regarding the Performance of "Incidental and Supplemental" Contracting Work.

The purpose of this measure is to request the Legislative Reference Bureau to:

- (1) Act as an independent agency to conduct a study of best practices regarding "incidental and supplemental" contracting work that includes:
 - (A) An examination of how other state jurisdictions define and handle "incidental and supplemental" contracting work; and
 - (B) Information on factors, other than cost, that other state contractor licensing boards or similar entities apply when making their determination of "incidental and supplemental" with respect to contracting work;

- (2) Obtain input from stakeholders on best practices regarding "incidental and supplemental" contracting work, including input from construction unions, construction companies, structural engineers, steel fabricators and erectors, and trades councils; and
- (3) Submit a report of its findings and recommendations, including any proposed legislation, to the Legislature no later than twenty days prior to the convening of the Regular Session of 2022.

The Bureau takes no position on the merits of this measure but submits the following comments for your consideration.

We have some concerns with how the measure is currently drafted. The focus of the resolution is to request the Bureau to conduct a study of best practices regarding "incidental and supplemental" contracting work based upon other state's methods of addressing the issue. However, the measure requests the Bureau to obtain input from "stakeholders," who are presumably in Hawaii. If the intent is to conduct a study on how *other states* address this issue, it may not be an efficient use of Bureau resources to expend considerable effort in obtaining and analyzing input from stakeholders in this State.

Furthermore, given the vast number of stakeholders that would need to be consulted, the compilation of their input, verification that the perspectives and opinions of stakeholders are consistent with contracting practices and standards, and comparison of that information with best practices of other states, the approximate six-month timeframe provided to the Bureau to deliver the report is too short.

Additionally, gathering this input would likely duplicate previous work conducted in response to S.C.R. No. 84, S.D. 1 (2013), which requested the Contractors License Board to conduct an assessment and prepare a report that evaluates each licensing classification under Chapter 444, Hawaii Revised Statutes.¹ In preparing that report, the Contractors License Board received more than one hundred fifty pages of comments from stakeholders, many of which addressed the nature of "incidental and supplemental" contracting work. As summarized on pages 2 and 3 of the Report of the Contractors License Board, the comments "offered different and often opposing perspectives," for example, including recommendations to "change the definition of 'incidental and supplemental' work," and "do not amend the definition of 'incidental and supplemental' work." It is to be expected that these diametrically opposed perspectives remain much the same today. Consequently, it is uncertain what new information is to be gained from soliciting stakeholders' opinions, and it is equally uncertain how that information will assist in determining the best practices in other states.

¹ The full report is available at https://lrb.hawaii.gov/wp-content/uploads/2013_ReportOfTheContractorsLicenseBoard.pdf.

Accordingly, we ask that the resolution be amended to request that the Bureau seek input from relevant national trade organizations on this issue, instead of the wide breadth of stakeholders mentioned on page 3, lines 14-18.

If the measure is amended to address the concerns noted above, the Bureau believes that the services requested under the measure would be manageable and that the Bureau will be able to provide the services in the time allotted; provided that the Bureau's interim workload is not adversely impacted by too many other studies or additional responsibilities, such as conducting, writing, or finalizing other reports, drafting legislation, or both, for other state agencies, task forces, or working groups that may be requested or required under other legislative measures.

Thank you again for the opportunity to submit written comments.

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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

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March 18, 2021

TO: HONORABLE AARON LING JOHANSON, CHAIR, HONORABLE LISA KITAGAWA, VICE CHAIR, COMMITTEE ON CONSUMER PROTECTION AND COMMERCE.

SUBJECT: **OPPOSITION TO H.C.R 141/H.R. 120, REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO CONDUCT A REVIEW REGARDING THE PERFORMANCE OF "INCIDENTAL AND SUPPLEMENTAL" CONTRACTING WORK.**

HEARING

DATE: Friday, March 19, 2021
TIME: 2:00 p.m.
PLACE: Capitol Room 329

Dear Chair Johanson, Vice Chair Kitagawa, and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of approximately five hundred (500) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. Our mission is to elevate Hawaii's construction industry and strengthen the foundation of our community.

GCA **OPPOSES** H.C.R. 141/H.R.120, which requests the Legislative Reference Bureau to conduct a review regarding the performance of "incidental and supplemental" contracting work.

These resolutions are unnecessary because "incidental and supplemental" work that specialty contractors can perform has already been established by the Hawaii Supreme Court in District Council 50 v. Lopez, 129 Hawaii 281, 298 P.3d 1045 (2013). The court interpreted "incidental and supplemental" to mean less than a majority. The Contractors License Board then developed an industry standard that complies with the court's order. The Contractors License Board standard has been subsequently upheld by the circuit court and ICA.

The Contractors License Board underwent the adoption of administrative rules to align the definition of "incidental and supplemental" with the District 50 vs Lopez decision. These rules are pending the Governor's approval. The proper arena to discuss concerns was during the administrative rulemaking process, which intimately involved input from the construction industry and was recommended after unanimous approval by the Contractors License Board.

SAH - Subcontractors Association of Hawaii

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Phone: (808) 537-5619 ✦ Fax: (808) 533-2739

March 19, 2021

Testimony To: House Committee on Consumer Protection & Commerce
Representative Aaron Ling Johanson, Chair

Presented By: Tim Lyons
President

Subject: HCR 141/HR 120 – REQUESTING THE LEGISLATIVE REFERENCE BUREAU
TO CONDUCT A REVIEW REGARDING THE PERFORMANCE OF
“INCIDENTAL AND SUPPLEMENTAL” CONTRACTING WORK.

Chair Johanson and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii and we can support this Resolution with an amendment. The Subcontractors Association of Hawaii is composed of the following nine separate and distinct subcontracting organizations which include:

HAWAII FLOORING ASSOCIATION

ROOFING CONTRACTORS ASSOCIATION OF HAWAII

HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION

TILE CONTRACTORS PROMOTIONAL PROGRAM

PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII

SHEETMETAL CONTRACTORS ASSOCIATION OF HAWAII

PAINTING AND DECORATING CONTRACTORS ASSOCIATION

PACIFIC INSULATION CONTRACTORS ASSOCIATION

ELECTRICAL CONTRACTORS ASSOCIATION OF HAWAII

Although the Resolution talks a great deal about incidental and supplemental and how it interfaces with certain specific trades, it should be noted that the incidental and supplemental applies to all trades. The Resolution calls for an evaluation and review of best practices regarding supplemental and incidental and a study on that subject.

Because of the multiple types of industries within the construction industry that associations represent, we would respectfully request that in the third to the last "BE IT FURTHER RESOLVED" clause that trade associations be specifically mentioned. Unions, companies and trade councils are represented however associations oftentimes have the resources to better participate in studies rather than individual entities.

Based on that amendment, we can support this Resolution.

Thank you.



LATE *Testimony submitted late may not be considered by the Committee for decision making purposes.

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL, ORNAMENTAL AND REINFORCING IRON WORKERS

Affiliated with A.F.L.-C.I.O.

LOCAL UNION NUMBER 625

94-497 UKEE STREET • WAIPAHU, HAWAII 96797

T.G. Paris
President Emeritus

March 19, 2021 - 2 pm
House - Consumer Protection and Commerce Committee
Via Videoconference
State Capitol -415 South Beretania Street

Re: HR120/HCR141 - REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO CONDUCT A REVIEW REGARDING THE PERFORMANCE OF "INCIDENTAL AND SUPPLEMENTAL" CONTRACTING WORK

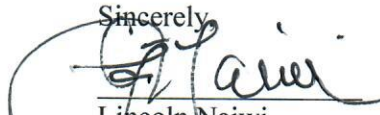
Aloha Chair Johanson, Vice-Chair Kitagawa, and members of the committee:

We **SUPPORT** resolutions HR120/HCR141. These resolutions request the Legislative Reference Bureau (LRB) to conduct a review regarding the performance of "incidental and supplemental" contracting work. The current Contractors License Board (CLB) interpretation of "incidental and supplemental" causes confusion in the industry and will ultimately lead to injury and even deaths.

We believe in **public safety** and the **safety of our Hawaii workers**. All the work that Ironworkers do in Hawaii is covered under the "S stamp" of a structural engineer, including steel erection. Steel erection is undisputedly one of the most dangerous work to do in the United States. Steel erection is a trade that commonly experiences a high rate of fatalities. According to Occupational Safety and Health Administration (OSHA), steel erectors continue to suffer 35 fatal accidents per year. Many of them ironworker brothers and sisters. These men and women perished on the job that was covered under the purview of a structural engineer, or similar, in their various states. Ironworkers are rigorously trained and go through apprenticeship and journeyman programs that allows them high levels of safety training for steel erection. Even with all that training, the job is still extremely dangerous as fatal accidents still occur. Unqualified workers doing structural steel erection is an extreme danger to the worker and to the public.

In 2019, two ironworkers became permanently disabled after being injured on the job with a qualified licensed contractor and cannot return to the trade. We can only imagine the number of injuries that occur to unqualified workers that do ironworker work while on projects under unscrupulous contractors that are not properly licensed but use "incidental and supplemental." Further, the Regulated Industries Complaints Office (RICO) has difficulty doing enforcement given the current board interpretation. Thus, unqualified workers are doing structural steel erection in Hawaii. Such work is shoddy resulting in property damage, structural defects, and ultimately puts the public at risk of injury or fatalities when those structures fail. Let's protect our workers and the public from harm by ensuring the legislature and the CLB have access to the best practices regarding "incidental and supplemental" contracting work.

Sincerely,



Lincoln Naiwi
President

IRON WORKERS STABILIZATION FUND

March 19, 2021 - 2 pm
House - Consumer Protection and Commerce Committee
Via Videoconference
State Capitol -415 South Beretania Street

Re: HR120/HCR141 - REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO CONDUCT A REVIEW REGARDING THE PERFORMANCE OF "INCIDENTAL AND SUPPLEMENTAL" CONTRACTING WORK

Aloha Chair Johanson, Vice-Chair Kitagawa, and members of the committee:

The Hawaii Iron Workers Stabilization Fund stands in solidarity with Iron Workers Local 625, AFL-CIO in support of these resolutions. We wish to continue the conversation on how best to address “incidental and supplemental” contracting work. Mahalo.